

IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF TEXAS
MARSHALL DIVISION

FUNCTION MEDIA, LLC * Civil Docket No.
 * 2:07-CV-279
VS. * Marshall, Texas
 *
 * January 26, 2010
GOOGLE, INC. * 1:30 P.M.

TRANSCRIPT OF JURY TRIAL
BEFORE THE HONORABLE CHAD EVERINGHAM
UNITED STATES MAGISTRATE JUDGE

APPEARANCES:

FOR THE PLAINTIFFS: MR. MAX TRIBBLE
 MR. JOSEPH GRINSTEIN
 Susman Godfrey
 1000 Louisiana Street
 Suite 5100
 Houston, TX 77002
 MR. JUSTIN NELSON
 Susman Godfrey
 1201 Third Avenue
 Suite 3800
 Seattle, WA 98101
 MR. JEREMY BRANDON
 Susman Godfrey
 901 Main Street
 Suite 5100
 Dallas, TX 75202
 MR. ROBERT PARKER
 Parker, Bunt & Ainsworth
 100 East Ferguson
 Suite 1114
 Tyler, TX 75702

APPEARANCES CONTINUED ON NEXT PAGE:

COURT REPORTERS: MS. SUSAN SIMMONS, CSR
 MS. SHELLY HOLMES, CSR
 Official Court Reporters
 100 East Houston, Suite 125
 Marshall, TX 75670
 903/935-3868

(Proceedings recorded by mechanical stenography,
transcript produced on CAT system.)

1 APPEARANCES CONTINUED:

2
3 FOR THE DEFENDANTS: MR. CHARLES VERHOEVEN
4 MS. AMY CANDIDO
Quinn Emanuel
5 50 California Street
22nd Floor
6 San Francisco, CA 94111

7 MR. EDWARD DEFRANCO
Quinn Emanuel
8 51 Madison Avenue
22nd Floor
9 New York, NY 10010

10 MR. HARRY L. GILLAM
Gillam & Smith
11 303 South Washington Avenue
Marshall, TX 75670

12 P R O C E E D I N G S

13
14 COURT SECURITY OFFICER: All rise.

15 (Jury in.)

16 THE COURT: Please be seated.

17 Judge Ward had a couple of criminal
18 proceedings going on upstairs, so we'll be adaptable and
19 conduct part of the proceedings down here.

20 I received a note that states: We re --
21 we request a copy of the charge from the Judge to the
22 jury, signed Juror No. 1, and the timeline that defense
23 used during closing, is also written on the bottom of
24 the note.

25 The Court's charge to the jury is an oral

1 charge, and a copy is not provided to the -- to the jury
2 and is not sent back to the jury room.

3 The timeline that you requested was not
4 offered in evidence, so I can't send a copy back to the
5 jury room for you to look at, but it was used for
6 demonstrative purposes, and I can bring you back into
7 the court and allow you to view it and will allow you to
8 view it for such time you-all would like to view it.
9 And I believe we've got it over here if y'all want to
10 put it on the easel.

11 MR. VERHOEVEN: May I, Your Honor?

12 THE COURT: Yes, please. And once you're
13 through viewing it, if you'll just signal me that --
14 I'll -- I'll excuse you and send you back upstairs to
15 continue your deliberation.

16 Can all of the jurors see it? Raise your
17 hand if you can't see it.

18 (Jurors view demonstrative.)

19 THE COURT: Okay. Anyone need more time?
20 If you do, raise your hand. Seeing no hands, I'll ask
21 that you return at this time to the jury room and
22 continue your deliberations in accordance with all the
23 Court's prior instructions.

24 COURT SECURITY OFFICER: All rise.

25 (Jury out.)

1 THE COURT: All right. Ms. Lockhart, if
2 -- if you'll file the two jury notes.

3 Any objections to the responses from the
4 Court to the jury note --

5 MR. TRIBBLE: No objections, Your Honor.

6 THE COURT: -- from the Plaintiff?

7 MR. VERHOEVEN: No objection.

8 THE COURT: Okay. We'll be in recess
9 pending further communication from the jury.

10 (Recess.)

11 COURT SECURITY OFFICER: All rise.

12 (Jury in.)

13 THE COURT: Please be seated.

14 All right. Ladies and gentlemen, I've
15 been handed a note that says that the jury has reached a
16 verdict; is that correct?

17 FOREPERSON: Yes.

18 THE COURT: If you'll hand it to the
19 Court Security Officer.

20 Okay. Ladies and gentlemen and parties,
21 what I'm going to do is I'm going to read the question
22 number, and then with respect to each claim, the answer
23 the jury has given.

24 Question No. 1, with respect to AdSense
25 for Content Online: Claim 1, no. Claim 20, no. Claim

1 37, no. Claim 52, no. Claim 63, no. Claim 90, no.
2 Claim 179, no. Claim 231, no.

3 With respect to AdSense for Mobile
4 Online: Claim 1, no. Claim 20, no. Claim 37, no.
5 Claim 52, no. Claim 63, no. Claim 90, no. Claim 179,
6 no. Claim 231, no.

7 Question No. 2, with respect to AdSense
8 for Content Online: Claim 1, no.

9 With respect to AdSense for Mobile
10 Online: Claim 1, no.

11 Question No. 3: Claim 1, yes. Claim 20,
12 yes. Claim 37, yes. Claim 52, yes. Claim 63, yes.
13 Claim 90, yes. Claim 179, yes. Claim 231, yes.
14 Subpart B: Claim 1, yes. Claim 20, yes. Claim 37,
15 yes. Claim 52, yes. Claim 63, yes. Claim 90, yes.
16 Claim 179, yes. Claim 231, yes.

17 Question No. 4, Subpart A: Claim 1, yes.
18 Subpart B: Claim 1, yes.

19 In accordance with the Court's
20 instructions, Question No. 5 has not been answered.

21 Signed today's date, Wendy Bush, jury
22 foreperson.

23 Now, ladies and gentlemen, I'm going to
24 ask for each of you that this represents your verdict --
25 if it does represent your verdict, please stand at this

1 time.

2 (Jurors stand.)

3 THE COURT: The record will reflect that
4 all of the jurors are standing, representing and
5 reflecting a unanimous verdict.

6 Please have a seat.

7 All right. Ladies and gentlemen, a
8 couple more instructions. I'm about to excuse you now
9 and release you from your jury service. I appreciate
10 very much the time that you have spent here in resolving
11 this difficult case.

12 You have been prompt when you're supposed
13 to be here, and you've been attentive throughout the
14 entire trial, and you have the thanks of the Court and
15 the parties for your service today.

16 Now, I've instructed you throughout the
17 trial up until you got the case for deliberations not to
18 discuss the case with anyone. Well, I'm reversing all
19 of those instructions. You can talk to whomever you
20 want to about the case, or you can not talk to whomever
21 you want to about the case. It's entirely up to you as
22 to whether and to what extent you wish to discuss your
23 jury service.

24 The rules that govern the practice of law
25 in this district do not allow lawyers to approach you

1 and talk to you about your jury service. However, the
2 rules do not prevent you from approaching the lawyers
3 and, you know, waving to them and saying, I'd like to
4 visit with you about the jury service. And I can assure
5 you that if you do that, they'll be delighted to invest
6 the time to have that discussion.

7 So with that, you are excused now from
8 jury service with the thanks of the Court and the
9 parties.

10 Please remember to give Ms. Anderson back
11 your buttons, and she can supply you with whatever types
12 of work releases and things that you need for your
13 employment.

14 With that, you're excused. Appreciate it
15 very much.

16 COURT SECURITY OFFICER: All rise for the
17 jury.

18 (Jury out.)

19 THE COURT: All right. Anything from the
20 Plaintiff at this time?

21 MR. TRIBBLE: Nothing at this time, Your
22 Honor.

23 THE COURT: From the Defendant?

24 MR. VERHOEVEN: Nothing at this time,
25 Your Honor.

1 THE COURT: All right. Thank you for
2 your presentations.

3 MR. TRIBBLE: Thank you.

4 THE COURT: Court's in recess.

5 (Court adjourned.)

6 * * * * *

7

8 CERTIFICATION

9

10 I HEREBY CERTIFY that the foregoing is a
11 true and correct transcript from the stenographic notes
12 of the proceedings in the above-entitled matter to the
13 best of my ability.

14

15

16

17 /s/_____
18 SUSAN SIMMONS, CSR
19 Official Court Reporter
20 State of Texas No.: 267
21 Expiration Date: 12/31/10

Date

20

21

22 /s/_____
23 SHELLY HOLMES, CSR
24 Deputy Official Court Reporter
25 State of Texas No.: 7804
Expiration Date 12/31/10

Date